Filed 6/25/19 In re B.H. CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re B.H., a Person Coming Under the Juvenile Court Law.	
SONOMA COUNTY HUMAN SERVICES DEPARTMENT, Plaintiff and Respondent, v. STEPHEN H., Defendant and Appellant.	A155850 (Sonoma County Super. Ct. No. 5217-DEP)

Stephen H. (Father) appeals from two orders in the juvenile dependency case of his daughter, B.H. (Minor). He argues that the trial court erred in denying him a hearing on his petition under Welfare and Institutions Code section 388[1] to modify an order terminating reunification services. He also argues that in terminating his parental rights, the court erred in finding that the beneficial parental relationship exception of section 366.26, subdivision (c)(1)(B)(i), did not apply. We find no error, and we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Petition and Detention*

On June 7, 2017, the Sonoma County Human Services Department (Department) filed a petition under section 300, subdivision (b)(1), alleging that Minor, then age two,

[1] Further statutory references are to the Welfare and Institutions Code.

was at substantial risk of harm because her parents' substance abuse left them unable to care for her, and subdivision (g), alleging that Father was incarcerated at the San Joaquin County Jail and unable to care for or support Minor.[2] According to the Department's detention report, Minor had been placed in an emergency foster home after Father was arrested for child endangerment and using a controlled substance in Tracy, California. Father had been found under the influence of methamphetamines, without money or possessions, and with Minor in his care.

At the detention hearing, the court ordered Minor detained and continued the matter for a jurisdiction and disposition hearing on June 29, 2017. That hearing was later continued to July 26.

B. *Jurisdiction and Disposition*

The Department prepared a jurisdiction/disposition report, filed on June 28, 2017, and an addendum report, filed on July 25.

Father reported to the Department that he had been given sole legal custody of Minor when she was about three months old. He and Minor had resided primarily in the home of his mother. Father and paternal grandmother cared for Minor for about half of each week. Minor typically spent the other half of each week with her maternal grandparents, who had guardianship of Minor's older maternal half-sibling. According to the Department, after the emergency placement, Minor had been placed with her maternal grandparents, where she was doing well.

The Department noted that Father had a criminal history as a juvenile and as an adult. He successfully completed Drug Court in 2010 for a drug violation for the use of marijuana. Father said he had "always smoked pot as far back as [he] can remember." He said he had been using methamphetamine consistently for the past two years.

In its first jurisdiction/disposition report, the Department stated that Father had entered inpatient treatment at Crossing the Jordan immediately after the detention hearing. About a week before the scheduled June jurisdiction/disposition hearing, he

[2] Minor's mother is not a party to this appeal. Her parental rights were terminated at the same time as Father's.

reported to the social worker that he was not entirely comfortable with the religious approach of the program, and that he struggled with being pressured to address early trauma in the therapy sessions. He expressed confidence in his ability to stick with the program, because the program would allow Minor to be placed with him while he was in treatment. But the very next day, he left the program. Even so, the Department recommended that reunification services be provided.

The social worker wrote that Father had participated in supervised visitation with Minor, and that Minor appeared to feel bonded to Father and enjoyed her time with him, and opined that if Father chose to return to inpatient treatment and demonstrated a renewed commitment to sobriety, it was possible, though unlikely, that Minor could be returned to his care before the end of the statutory period. The social worker noted that Father leaving his inpatient program while "knowing that there are no other programs in the area where [Minor] would be able to be returned to his care while he completes treatment," would "significantly impact the prognosis" for the return of Minor to Father's care.

By the time it prepared its addendum report, however, the Department recommended denying reunification services under section 361.5, subdivision (b)(13), which provides that reunification services need not be provided to a parent who "has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention." The Department reported that Father returned to Crossing the Jordan about 10 days after he left, but was subsequently asked to leave the program for failure to comply with its rules. Father told the social worker that he intended to return to full-time work, believing that he would benefit more from working than from completing a drug treatment program. The social worker gave Father information about the upcoming settlement conference in the case, but Father failed to attend. The Department also reported that Father did not visit with Minor consistently: he had seen her just three times during the seven-week period following the detention hearing.

Father attended the July 26, 2017 jurisdiction and disposition hearing. He submitted on the matter of jurisdiction, and a contested hearing was scheduled to address whether Father would receive reunification services.

C. *Contested Disposition Hearing*

At the contested hearing, held on August 14, 2017, Father testified that he was scheduled to check into a 30-day residential treatment program at Turning Point that afternoon. At the end of the hearing, the court stated it would make a decision on disposition at a hearing on September 14.

At the September 14, 2017 hearing, it was reported that Father had completed his 30-day treatment program and was planning to continue in treatment through the drug dependency court. The court ordered that reunification services be provided to Father, and scheduled an update hearing for December 7, with the six-month review hearing to take place on March 7, 2018.

D. *Update Hearing*

Father was not present at the December 7, 2017 update hearing. His attorney reported, "[Father] did phone me and stated that he needed to be at work in order to hopefully secure a promotion. [¶] But I do know that there has been some challenges with [him], and I spoke with the social worker, and some of it has to do with his continued sobriety and then, also, some unexplained inconsistent visits. So I just texted him and let him know that we need to talk tomorrow about how things are progressing or not progressing."

E. *Six-Month Review*

1. *First Report*

On February 28, 2018, the Department filed its report for the March 7 six-month review hearing and recommended that reunification services be continued for Father. Minor remained with her maternal grandparents. The Department reported that Father's visits with Minor went well but that Father twice failed to show up without cancelling, twice cancelled due to illness, and appeared to be under the influence of drugs during at least one visit. Although Father had one negative drug test in late September 2017, he

subsequently failed to comply with requests from the Department to test, except for once in February 2018, when he tested positive for marijuana. He admitted that he would have tested positive for drugs on a date in December when he was asked to test.

The Department reported that although Father had understood that he was supposed to continue in treatment with the Dependency Drug Court and the Drug Abuse Alternatives Center (DAAC) outpatient program, he declined to participate in Dependency Drug Court because he was working out of town, and failed to appear for a scheduled DAAC screening in November 2017. In December, Father told the Department he would consider inpatient treatment at Turning Point, but would first go through detox. Father entered the Turning Point program, but was placed "on contract for deviating" because he was gone for a day. His counselor at Turning Point said she expected him to detox for a day and resume the program, but eventually reported that when Father left to detox, he did not actually go: he was tested upon his return and was positive for amphetamines. He was discharged from Turning Point; the discharge letter stated that Father chose to use and smoke in the facility and had not learned coping skills.

Father then received a new referral to outpatient treatment at DAAC. He attended the initial screening and a February 14 group session, but failed to show for a subsequent group and a scheduled Addiction Severity Index assessment. The Department further reported that Father asked for support to address issues underlying his use of drugs, and said he was taking antidepressants. Father was referred to therapy, which was scheduled to begin on February 12, 2018.

Minor's paternal grandmother informed the Department that on February 18 she kicked Father out of her home, where he had been living for a short time, due to concerns about his drug use and disrespect for her home. She reported that Father had started sneaking around, not coming home on time, and making up things. He returned to her home the day after he was kicked out to retrieve his belongings. Minor was visiting with her that day, and Father was acting erratic, so she called law enforcement, who helped transport him away from her home.

The Department concluded, "It is understood that part of recovery will involve relapse and [Father] has demonstrated that he has some capacity and ability to work toward his case plan goals. It is with hopes that as he becomes more engaged with individual therapy to focus on his depression, he can also address the underlying issues and work on his recovery. It is clear he needs to build more coping skill[s] and assess his relationships and partner selection. For the past six months, [Father] has for the most part, consistently visited with [Minor] and it is clear they both love one another. Although he has remained in contact with the [social worker] to work on his case plan goals, he has had several setbacks and will need to show that he can consistently make changes so [Minor] can return home to his care."

On March 7, 2018, the six-month review hearing was continued to March 22.

2. *Addendum Report and Hearing*

On March 21, 2018, the Department filed an addendum report recommending the termination of reunification services and the setting of a section 366.26. hearing to determine a permanent plan for Minor.

The Department reported that Father had visited with Minor in February and March, but at one of the February visits he was reported to be disengaged, jittery, and restless. The Department stated, "It is clear from the visits that they both love one another very much." Minor expressed that she likes visits with Father, that he is nice to her, and that she wants to visit and live with him. The Department also reported that Father had been discharged from DAAC for lack of contact, and had been dropped from his therapy treatment for failure to attend or be in contact with the Department or therapist. He tested positive for amphetamines and marijuana in mid-March.

The Department explained its change in recommendation, stating that in spite of Father's many setbacks, it had previously recommended additional services on the theory that, "being able to reside with his mother again and have stable housing, along with employment and support from his family and friends, he would be motivated to engage in his services." That had not happened. According to Minor's paternal grandmother, Father was not working. Father was reported to have surrounded himself with some old

friends, and had not followed up with his therapy or substance abuse treatment. The Department concluded that in light of Father's lack of progress in services, there was not a substantial probability that with the continuation of services Minor could be safely returned to his care within the statutory time for reunification.[3]

Father did not appear at the March 22, 2018 six-month review hearing. His counsel reported that Father was aware of the hearing and that he had been present at the settlement conference the day before at which the Department's addendum report was discussed. Counsel further reported that she had discussed Father's options going forward, but had no instructions from him and therefore did not oppose the court going forward.

The court terminated Father's reunification services, and scheduled a section 366.26 hearing for July 11, 2018. The hearing was eventually continued to September 4, 2018 to allow the Department to demonstrate it had adequately searched for Minor's mother to provide her with notice of the hearing.

F. *Section 366.26 Report*

In its section 366.26 report, filed on July 6, 2018, the Department determined that Minor was likely to be adopted, recommended adoption as the permanent plan, and identified Minor's maternal grandparents, who had been part of her life since birth, as potential adoptive parents. The maternal grandparents had been married more than 20

[3] When family reunification services are provided for a child who, like Minor, was under three years of age at the time of initial removal from her parent's physical custody, services are generally provided "for a period of 6 months from the dispositional hearing . . ., but no longer than 12 months from the date the child entered foster care . . . unless the child is returned to the home of the parent or guardian." (§ 361.5, subd. (a)(1)(B).) Under certain circumstances, services may be provided for an extended period. (§ 361.5, subds. (a)(3)(A) & (a)(4)(A).) Thus, services may be extended up to 18 months from the date the child is removed from her parent's physical custody if it can be shown "that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period," but only if the court "finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian." (§ 361.5, subd. (a)(3)(A.)

years, had two biological children ages 9 and 11 who were living in the home, and were legal guardians to Minor's older maternal half-sibling.

The Department described Minor as a good-natured child, who was outgoing, engaging and bright, and developmentally on track, and who presented no behavioral or emotional concerns. She "appear[ed] to be thriving in the care of the potential adoptive parents."

The Department noted that Father and Minor had a "close, playful and loving relationship," and that Minor generally enjoyed the visits. The Department concluded, however, that "when [Minor] does not feel safe, or is sick she wants her primary caregivers, the maternal grandparents for comfort/support. The potential adoptive parents are [her] psychological parents, not [Father] who is a friendly visitor. [¶] The permanency that [Minor] will gain through adoption outweighs the benefit of a friendly visitor . . . . Therefore the Department . . . assesses that termination of parental rights would not be detrimental to [Minor.]" The department noted that maternal grandparents favored a formal or informal agreement to continued contact with the parents after adoption, and the Department had referred the family for mediation to determine the form of continued contact.

G. *Father's Request for Modification*

On July 11, 2018, Father filed a petition under section 388 in which he asked the court to modify its March 22, 2018 order by continuing family reunification services. Alternatively, he asked the court to order legal guardianship, rather than adoption, as Minor's permanent plan "so that my daughter can continue to have a relationship with me."

Father alleged, "Since the last hearing I have moved to a new town where I have emotional, social, and financial support and stability to help my recovery, which I have resolutely maintained." And he alleged that the modification would be in Minor's best interest because he and Minor "have a strong positive relationship, and because it is best for a child to be with a healthy and stable parent, rather than being adopted."

In a supporting declaration, Father stated he had been clean and sober since April 6, 2018, when he went to stay with his uncle in Sunnyvale, California. He had been engaged in intensive drug rehabilitation since April 12, and while he was staying with his uncle, he participated in Santa Clara County Behavioral Health Services' treatment program. By moving to Sunnyvale, he "got . . . away from a scene [he] wouldn't have been able to get away from otherwise, [he] would have been stuck in the same environment with the same people [he] had been around." Father said he moved back to Santa Rosa on July 1, and was trying to enroll in DAAC's treatment plan. In the meantime, he was attending Narcotics Anonymous (NA) meetings and looking for a local sponsor. He was on Step 4 in NA, admitting his wrongs and taking responsibility. He was working as an iron worker and doing some concrete work to support himself and preparing for the GED exam. He looked forward to getting his GED, and then joining the iron workers' union to get better pay and benefits.

In further support of his petition, Father provided a copy of a drug treatment plan dated May 24, 2018, which stated his substance abuse was severe, a sign-in sheet reflecting attendance at nine group support meetings between May 31 and June 19, a GED test appointment confirmation for July 13, and letters attesting to his progress from his uncle, mother, and three friends.

H. *September 4, 2018 Hearing*

On September 4, 2018, the court denied Father's section 388 petition after hearing argument, explaining, "[W]hat the law requires that I do is has circumstances changed? If circumstances have changed, is it in the child's best interest? When I look at dependency cases, time is the key factor. [¶] Your child has been out of your care for more than a third of your child's life. [¶] So, the question is, would providing you with services, getting you into a position where you may potentially have your child back, would that be beneficial for your child or has your child established [a new] life in a new home where the child's been for over a year? [¶] . . . [¶] Based on the state of the evidence, I do have to find that the evidence supports that the child is in a stable place, your circumstances are changing, but it's not in your child's best interest to have that

disruption potential. So, I do deny [the petition]. I do believe you've done well and you are changing your circumstances and you should be proud of being clean and sober, but I cannot factor that against the stable home that your child has found and is living in and enjoying."

The court then moved on to the section 366.26 hearing. Father's counsel explained Father's position: a guardianship, rather than adoption, would be appropriate because he had maintained continuing contact with Minor, and it would be in Minor's best interest to maintain her relationship with him. The court took judicial notice of its file, which includes the Department's reports, and heard testimony from Father and the social worker, and argument from counsel.

In his testimony, Father stated that he loved Minor, and acknowledged that he'd "messed up" and should have changed his life sooner. He testified that he had "gotten clean," was "staying in a sober spot," had a sponsor and a job, and recently received his GED. Minor ran to greet him with a hug at visits, at which they played together. Minor was sad at the end of visits and did not want Father to leave.

The social worker testified that Father's visits were supervised, that Minor was excited to see Father, they played and interacted well, and Minor had no issues leaving his care. She also testified that the family supported ongoing contact between Father and Minor after adoption, "as long as it's safe."

After hearing argument from counsel, the court said, "When it comes to a plan for a child, the legislature has instructed me that I pick adoption first. And I have to rule out adoption to move to another plan. So it's only if there's evidence to rule out adoption can I do that. I don't believe there is evidence here that would allow me to do that. So I am going to pick adoption as the plan." The court found by clear and convincing evidence that it was likely Minor would be adopted and that termination of parental rights would not be detrimental to her, and ordered adoption as her permanent plan.

At the close of the hearing, the court encouraged Father to maintain his sobriety and his good relationship with maternal grandparents, saying that in the future his role could grow and strengthen as a positive influence on Minor's life. The court concluded,

"[W]hen you leave court today, you're going to have two choices: Remain clean and sober or get high. But that's a choice you have everyday. But today you have a really good excuse to get high, but you have even a better reason to stay clean and sober and that's your child. Your child deserves a clean and sober dad, your child deserves a dad that your child can be proud of. So you've made a lot of progress, keep that going. I don't know what the future is going to hold. I do know that nature's course would be for the grandparents to die before you and for you then to have an increased role."

This appeal followed.

DISCUSSION

A. *Father's Section 388 Petition*

1. *Applicable Law and Standard of Review*

Section 388 authorizes the parent of "a child who is a dependent child of the juvenile court" to petition the court "for a hearing to change, modify, or set aside" a previous court order. (§ 388, subd. (a)(1).) The petitioner "has the burden to show, by a preponderance of the evidence, there is a change of circumstances or new evidence, and the proposed modification is in the child's best interests." (*In re A.S.* (2009) 180 Cal.App.4th 351, 357 (*A.S.*).) The petitioner " ' need only make a prima facie showing to trigger the right to proceed by way of a full hearing.' " (*Id.* at pp. 357-358.) "The court must liberally construe the petition in favor of its sufficiency." (*Id.* at p. 357.)

We review the denial of an evidentiary hearing on a modification petition for abuse of discretion. (*A.S.*, *supra*, 180 Cal.App.4th at p. 358.) "Under this standard of review, we will not disturb the decision of the trial court unless the trial court exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination." (*Ibid.*)

2. *Analysis*

Father argues that in his section 388 petition he made a prima facie showing that his circumstances had changed because he was maintaining his sobriety and had moved to a new town where he had emotional, social, and financial support and stability to help him in his recovery. The juvenile court did not minimize Father's efforts, nor do we.

The evidence before the juvenile court was that Father has a severe addiction and a lengthy history of drug use, including consistent use of methamphetamine during the two years before this dependency proceeding began. During the year between Minor's detention and Father's section 388 petition, Father had engaged in treatment on multiple occasions. He left treatment at Crossing the Jordan without completing it in early summer 2017, underwent treatment at Turning Point in late summer 2017 and relapsed, went back to Turning Point in winter 2017-2018 but continued using drugs there, and then in late winter 2018 he was referred to further treatment and therapy, but failed to follow through. He tested positive for marijuana and amphetamines in March 2018, and did not begin his most recent period of sobriety until after the juvenile court terminated his reunification services. His most recent period of sobriety was associated with his moving for three months to a new town, where he developed a new network. He was now back in his old town and trying to develop a new network there.

Even if we assume that Father's evidence of his recent recovery constituted a prima facie showing of changed circumstances, we find no abuse of discretion in the juvenile court's determination that Father failed to make a prima facie case that providing him additional reunification services was in Minor's best interest. When a section 388 petition is filed after the termination of reunification services and on the eve of the section 366.26 hearing, as in this case, the best interest analysis must focus on the needs of the child for permanence and stability. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) "[I]n fact, there is a rebuttable presumption that continued foster care is in the best interest of the child." (*Ibid.*) Thus, "a parent's petition for . . . an order . . . reopening reunification efforts must establish how such a change will advance the child's need for permanency and stability." (*In re J.C.* (2014) 226 Cal.App.4th 503, 527 [noting that it was not in the child's best interest "to further delay permanency and stability in favor of rewarding Mother for her hard work and efforts to reunify," and that "Mother's best interests are simply no longer the focus"].) Father's petition nowhere addresses Minor's need for permanence and stability and does not even allude to Minor's existing stability with her maternal grandparents. To the contrary, Father simply states that he and Minor

have a strong positive relationship and opines that it is better for a child to be with a healthy and stable parent rather than being adopted. Father's focus is solely on the continuation of his relationship with Minor, which consisted of supervised visits once or twice a month.

Father argues that this case is similar to *In re Aljamie D.* (2000) 84 Cal.App.4th 424 (*Aljamie D.*), where the Court of Appeal found that the juvenile court erred in denying a hearing on appellant mother's section 388 petition to modify an order of long-term foster care for her children, ages 9 and 11. (*Id.* at pp. 428-429, 432.) In *Aljamie D.* there was no dispute that appellant Mother had alleged a change in circumstances. (*Id.* at p. 432.) To support her claim that modification was in the best interests of her children, she alleged that her children, had repeatedly made clear that their first choice was to live with their mother. (*Ibid.* [child stating she wants to live with her mother is "powerful demonstrative evidence that it would be in her best interest to allow her to do so"].)

But in *Aljamie D.*, the children were much older than Minor, who was not yet four when the section 388 petition was filed, and they had lived with or had weekend overnight visits with their mother at times during the dependency proceeding. (*Id.* at pp. 427-428.) Here, Minor had previously expressed that "she wants to visit and live with her father." But in the report that the Department filed just days before Father filed his petition, the social worker noted that Minor "has been observed with her caregivers and found to have a healthy parent/child relationship. When the undersigned asked [Minor] where she wanted to live she stated at her house with her current caregivers. In the placement home [Minor] is comfortable and secure and has claimed this as her home and family. She seeks out her caregivers to have her needs met when she is hungry, tired, or unsure."

In these circumstances, the juvenile court did not abuse its discretion in concluding that Father's evidence of his strong positive relationship with Minor did not establish a prima facie case that it would be in Minor's best interest to delay permanency in the hope that Father might at some point be ready to have Minor live with him.

B. *Beneficial Parental Relationship Exception to Termination of Parental Rights*

1. *Applicable Law and Standard of Review*

"At a hearing under section 366.26, the court must select and implement a permanent plan for a dependent child. Where there is no probability of reunification with a parent, adoption is the preferred permanent plan. [Citation.] To implement adoption as the permanent plan, the juvenile court must find, by clear and convincing evidence, that the minor is likely to be adopted if parental rights are terminated. (§ 366.26, subd. (c)(1).) Then, in the absence of evidence that termination of parental rights would be detrimental to the child under statutorily specified exceptions (§ 366.26, subd. (c)(1)(A)-(B)), the juvenile court 'shall terminate parental rights.' (§ 366.26, subd. (c)(1).)" (*In re K.P.* (2012) 203 Cal.App.4th 614, 620 (*K.P.*).)

Section 366.26, subdivision (c)(1)(B), sets forth exceptions to the preference for adoption that apply if the court finds a "compelling reason" that termination of parental rights would be detrimental to the child due to certain circumstances. Under the beneficial parental relationship exception, a parent must establish that he has "maintained regular visitation and contact with the child," and that "the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i); *In re Fernando M.* (2006) 138 Cal.App.4th 529, 534 [parent bears burden to show applicability of statutory exception to adoption].) The parties here do not dispute that Father maintained contact with Minor, so we focus on the benefit to the child.

"The 'benefit' prong of the exception requires the parent to prove his or her relationship with the child 'promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.' [Citations.] No matter how loving and frequent the contact, and notwithstanding the existence of an 'emotional bond' with the child, 'the parents must show that they occupy "a parental role" in the child's life.' [Citations.] The relationship that gives rise to this exception to the statutory preference for adoption 'characteristically arises[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child

relationship.' [Citation.] Moreover, '[b]ecause a section 366.26. hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement.' " (*K.P.*, *supra*, 203 Cal.App.4th at p. 621.)

"The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child's life spent in the parent's custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child's particular needs. [Citation.] While the exact nature of the kind of parent/child relationship which must exist to trigger the application of the statutory exception to terminating parental rights is not defined in the statute, the relationship must be such that the child would suffer detriment from its termination. [Citation.]" (*In re Angel B.* (2002) 97 Cal.App.4th 454, 467, fn. omitted.)

California courts are divided on the correct standard of review of an order that declines to apply an exception to the termination of parental rights. Most courts have reviewed such orders for substantial evidence (see, e.g., *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53 & fn. 4), while others have used the abuse of discretion standard. (See, e.g., *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

In other cases, courts have blended these approaches based on the view that the beneficial parental relationship exception requires the juvenile court to make two determinations. The first, whether a beneficial relationship exists, is a factual determination properly reviewed for substantial evidence. The second, whether that relationship constitutes "a compelling reason for determining that termination would be detrimental to the child" (§ 366.26, subd. (c)(1)(B)), requires the juvenile court to " 'determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption,' " and is appropriately reviewed for abuse of discretion. (*K.P.*, *supra*, 203 Cal.App.4th at p. 622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) We will apply this blended standard.

2. *Analysis*

The juvenile court found that there was a beneficial relationship between Father and Minor: that is clear from the court urging Father to continue on his positive road so that he could have a continuing and greater role in Minor's life. So we consider whether the juvenile court abused its discretion in determining the importance of that relationship and concluding that the benefit to Minor of adoption outweighed any detrimental impact of severing the parent-child relationship.

Minor was just four years old at the time of the section 366.26 hearing. Her maternal grandparents had provided her day to day care for more than a year, and had cared for her regularly before that. They were providing a stable, secure, nurturing environment and were committed to continuing to do so. For the most part, Minor looked forward to her visits with Father, and the visits went well. But Father visited with Minor once or twice a month, and played the role of "friendly visitor," rather than parent. This is not unexpected in view of the limited supervised visits that he had with Minor, and it is not a criticism of Father. But it supports the juvenile court's determination that the positive relationship between Father and Minor was not of such importance that it outweighed the benefit of Minor's adoption into a stable and loving home.

This case is similar to *K.P.*, where the Court of Appeal affirmed the juvenile court's decision not to apply the parent-child relationship exception to the statutory preference for adoption in the face of weekly supervised visits between the parent and child. (*K.P.*, *supra*, 203 Cal.App.4th at pp. 617, 622.) As in *K.P.*, the supervised visits between parent and child here were pleasant for both of them, but "there was no evidence in the record (beyond [the parent's] stated belief) that termination of the parent child-relationship would be detrimental to [the minor] or that the relationship conferred benefits to [the minor] more significant than the permanency and stability offered by adoption. We cannot say that the juvenile court abused its discretion when it concluded that any detrimental impact from severance of the limited relationship [Minor] had with [Father] was outweighed by the benefits to [Minor] that would come from adoption." (*K.P.*, *supra*, 203 Cal.App.4th at pp. 622-623.)

Father argues that the juvenile court erred in relying on the likelihood that Minor's caregivers would allow continued visitation for Father and Minor, and focusing on the likelihood that Father and Minor would maintain a relationship despite the termination of Father's parental rights. Father's argument rests on the juvenile court's statements at the conclusion of the section 366.26 hearing about the possibility of Father playing a role in Minor's life, and on a statement by the Court of Appeal in *In re S.B.* (2008) 164 Cal.App.4th 289, 300 (*S.B.*), that, "[w]e do not believe a parent should be deprived of a legal relationship with his or her child on the basis of an unenforceable promise of future visitation by the child's prospective adoptive parents."

We are not persuaded by Father's argument. There is no evidence that the juvenile court relied on post-adoption contact between Father and Minor in reaching its decision. The evidence before the juvenile court was simply that the adoptive parents were in support of a formal or informal agreement to govern post-adoption contact, and that any future visitation depended on the adoptive parents' determination that future contact was "safe." The trial court made its statements about the possibility of future contact after it announced its decision, and as encouragement to Father to continue the positive changes he had made in his life. Further, courts have noted that *S.B.* "must be viewed in light of its particular facts." (*In re C.F.* (2011) 193 Cal.App.4th 549, 558 (*C.F.*), quoting *In re Jason J.* (2009) 175 Cal.App.4th 922, 937 (*Jason J.*).) Yet Father does not discuss the facts of *S.B.* in either of his briefs.

Father claims that it is inconsistent for a court to suggest that there is a beneficial relationship between parent and child that might be strengthened while at the same time holding that the termination of parental rights is in the child's best interest. But as appellate courts have recognized, it is not the case that a termination order is subject to reversal in every case where there is some benefit in continued contact between a parent and child. (*C.F.*, *supra*, 193 Cal.App.4th at p. 559; *Jason J.*, *supra*, 175 Cal.App.4th at p. 937.)

Father also argues that because he had "taken all steps possible to reunify" with Minor, it was error to terminate his parental rights. Father likens this case to *In re Amber*

M. (2002) 103 Cal.App.4th 681, 690, in which the Court of Appeal reversed an order terminating parental rights where the mother "did virtually all that was asked of her to regain custody." But the facts of *Amber M.* are different: in that case, there was evidence that the mother's two older children had a strong primary bond with their mother, as well as evidence from a psychologist, therapists, and a court-appointed special advocate that the beneficial parent-child relationship outweighed the benefit of adoption. (*Ibid.*) There is no such evidence here. Furthermore, Father exaggerates in suggesting that he did all things possible to reunify with Minor. Still, we do not disparage his efforts. As the juvenile court noted, everyone agreed that Father was working hard and making good changes in his life, and we join in applauding Father for remaining sober, having a sponsor, passing his GED exam, maintaining steady employment, and taking his medications. As the juvenile court also noted, the issue before it was not Father's efforts; the issue was Minor's best interest.

DISPOSITION

The orders appealed from are affirmed.

_____
Miller, J.

We concur:

_____
Kline, P.J.

_____
Richman, J.

A155850, *Sonoma County Human Services Dept. v. Stephen H.*